No. 95-990 (3)

In The

Supreme Court of the United States

October Term, 1995

ROLAND A. JONES,

Petitioner,

Supreme Court, U.S.
FILED
FEB 21 1996
CLERK

vs.

SECRETARY OF THE ARMY, et. al.

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

SUPPLEMENTAL BRIEF

Roland A. Jones, pro se
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I. The Intent Of This Court's *Hains* Is "Routinely" Ignored In The 11th Circuit.

Due process requires a hearing by an impartial tribunal; tribunals should avoid even appearances of impropriety. *Dirt, Inc. v. Mobile County Com'n*, 739 F.2d 156 (11th Cir. 1984). The anti-*pro se* situation in the 11th is so bad that in *Jones v. Ford Credit Company*, USDC. # 1:95-cv-1320, all the lawyer had to do to overcome this Court's *Hains v. Kerner*, 404 U.S. 519 520-21 (1971) and other case law that prohibits dismissing *pro se* complaints (App. 1,p. 4a, atchd.) was to arrogantly advise the court of the 11th's anti-*pro se* history:

> "... this Court and courts in this circuit, affirmed by the Court of Appeals, have routinely dismissed pro se complaints...",

disparage my reputation, and list the 11th Circuit's ("11th") anti-*pro se* case law. (App. 2, p. 4a, atchd.). My cases, listed by the lawyer, provide the best examples of the 11th's anti-*pro se* attitude: 1. In this case, the lawyer files for summary judgment, I provided "smoking gun" evidence showing that "PERMANENT" passover letters were not removed from my record according to law, and show on two (2) occasions the lawyer admits in court papers that the Army Board for Correction of Military Records ("ABCMR") violated the law by not acting, but she was granted summary judgment; 2. Conversely, I filed for summary judgment in *Jones v. Fulton County Georgia Board of Commissioners*, Supreme Court #95-1180, and provided "smoking gun" evidence that payment was not made and personal property was taken and the lawyer's legal arguments and documentation were found by the court to be "inadequate", but he was granted summary judgment; and *Jones v. Ford Motor Credit Company*, U.S. D. C. # 1:95-cv-1320, I provided this Court's

Hains and other case law showing that *pro se* complaints should not be dismissed, and show the court "smoking gun" evidence that my initials were surreptitiously forged to a lease agreement, in violation of the Consumer Leasing Act, but the court dismissed.

II. This Court Should Grant This Petition To Clarify The Burden Of Proof And Standard Of Review For Pro Se Facts, Evidence, And Case Law Presented In Support Of Claims.

This petition is asking this Court to enforce this *pro se's* due process in the 11th, enforce its *Hains*, concerning *pro se* complaints, enforce its *Celotex Corp. v. Catrett*, 477 U. S. 317 (1986), 325 concerning summary judgments, and enforce its *Chappell v. Wallace*, 462 U.S. 296, at 303 concerning the ABCMR. In the 11th, it does not matter how much merit a *pro se's* case has. In the 11th, a *pro se* is treated as a non-person ring the proceedings. This *Pro se*'s facts, evidence, and case law were completely ignored. (Pet. Apps. B and C).

Pursuant to this Court's *Celotex*, the below genuine issues of material fact were raised in opposition to respondents' motion for summary judgment (App. 3, p. 7a, atchd.), but they were not considered by the district court or the court of appeals. Since they were not considered, I request that this Court review the following sets of fact, using the standard this Court expressed in *Hains*, "[w]e cannot say with assurance that under the allegations of the *pro se* complaint . . . it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief":

a.

Set Of Facts #1, Deserving *Hains/Celotex* Analysis

The ABCMR had three (3) opportunities to automatically remove the 1974 and 1975 passover letters stamped "PERMANENT" (Pet. Apps. J & K, p. 35-38a) from my record: 1. On January 26, 1976, when the Secretary of the Army directed "that the military records of all eligible primary zone officers. . .be appropriately reconstituted (as my record appeared before the 1974 and 1975 boards were convened)" (Pet. App. A2, p. 7a, par. 4b); 2. in 1979/1980 when *Dilley v. Alexander*, 603 F.2d 919 (1979) and 627 F.2d 407 at 409, 413, 924, (1980) declared my 1976 Relook promotion board to be illegal,[1] and when the ABCMR was ordered to remove the passover letters;[2] and 3. when the bogus June 29, 1983, ABCMR panel placed my record before its 1983 "Relook" promotion board. Because the ABCMR did not remove the passover letters from my record, my 1979 and 1980 promotion boards [2] were "inherently tainted"[2] (Pet. App. M, p. 49a), and causing me not to be selected for promotion from permanent Major Regular Army ("RA") to permanent Lieutenant

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[1] "...the Correction Board recommended that the 1975 Boards be `reconstituted' with the proper membership, and that these so-called `Relook Boards' reconsider all primary zone officers who had been considered by the defective 1975 Boards...The Corrections Board's decision to recommend the Relook Boards similarly amplifies the Army's attitude . . . This ends-justifying-the-means procedure is inconsistent . . .for it would permit the Army to violate its governing statutes at will and then determine for itself whether the violation made any difference". *Dilley*, 924 (1979).

[2] In *Dilley v. Alexander*, 627 F.2d 407 at 409, 413, 924, (1980) the court also held "...all records, including those reflecting nonselection by the promotion selection boards, be correctedto put appellants in the position

Colonel ("RA"). Because I was not promoted, I was forced to retire as a permanent Major, RA (Pet. App. K2, p. 39a). If I had not been forced to retire, I could have attained much higher ranks (AUS and RA). Respondents did not demonstrated "there is no genuine issue as to any material fact" entitling them to judgment.[3]

b.

Set Of Facts #2, Deserving *Hains/Celotex* Analysis

The lawyer on two (2) occasions admitted that the ABCMR did violate the law by doing absolutely nothing (Pet. Apps. N and M, p. 50a and 51a) to correct my record.[4]

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[2] Continued: they would have occupied had the Army not engaged in its unlawful selection procedure . . .they should not contain any adverse reference to the passing over of appellants for promotion by the selection boards of 1975 and 1976...The 1976 Boards. . . had before them records that reflected appellants' nonselection in 1975 even though appellants had never been lawfully passed over. Thus establishment of the Relook Boards had no effect on appellants' status before the 1976 Boards, though it should have if appellants were to be placed in the same position they were in before 1975...This error was not insignificant, for the promotion prospects of an officer already once `passed over' by a selection board are narrow." In *Sanders v. U. S.*, 594 F.2d 804 at 819, 1979 the court held "...passovers should have been removed...so that he could have a clean slate for selection board consideration on a `fair and equitable basis. Not to do this was both legal error and an injustice to plaintiff because it was arbitrary, capricious decision, and an abuse of discretion which aborted the selection process..."

[3] The only defenses raised by the respondents' only defenses were "the plaintiff has unjustifiably relied upon Dilley", and "in plaintiff's case the promotion board which considered him for promotion to LTC, AUS was not illegal" (Pet. App. M, p. 48a & 49a). Both, contrary to the directions of the Secretary and *Dilley*'s holding the 1976 Relook board illegal.

[4] The ABCMR twice admitted it did absolutely nothing: 1. June 4,

c.

Set Of Facts #3, Deserving *Hains/Celotex* Analysis

Matthews conspired[4] to illegally constitute a bogus ABCMR June 29, 1983, panel (App. 1, p. 12-15a, atchd.), the panel relied on by the district court for summary judgment (Pet. App. E, p. 23a), which recommend me for 1983 "Relook" promotion consideration using 1979/1980 criteria (which I failed) when Matthews knew I was predisposed to failure because the "PERMANENT" 1974 and 1975 passover letters[3] were still in my record. The rehearing of April 25, 1984, and March 27, 1985 are also illegal because the June 29, 1993, panel was illegally constituted.

Respondent Matthews covered-up the ABCMR's not acting during 1975-76, 1983-85, and not removing the "PERMANENT" passover letters per *Dilley*:

> "I specifically reject any offer you might be be trying to convey. . ." (Pet. App. F, p. 25).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,
Roland A. Jones
Permanent Major, RA
1390 Heatherland Drive
Atlanta, Georgia 30331

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[4] Continued:1990: "there was never a board constituted in the 1970's which reviewed plaintiff's record.. .the plaintiff's records were never reviewed by the ABCMR board in the listed years." (App. N, p. 50a and 51a). and, 2. April 11, 1991: "Additionally, it is equally

plausible that the ABCMR did not respond or act upon plaintiff's...because the plaintiff had not completed the exhaustion of his administrative remedies." (Pet., App. M, 47a). 10 U. S. C. 1552 and its implementing regulations 32 CFR 581.3(b)(1)(ii)(2) and (3), and Section II, 4 and 5, AR 15-185) state that: "the function of the Board is to consider all applications properly before it for the purpose of determining the existence of an error or an injustice". In *Baxter v Claytor*, 652 F.2d 181,185 it has been held that ". . .the Board has a nondiscretionary, judicially enforceable, duty to exercise this power to correct such records. . .the Board erred in failing to perform a nondiscretionary duty...". In this case, the district court found: ". . .documentation provided by plaintiff suggests that only plaintiff's 1975 'applications' were properly submitted to and were, in fact, received by the ABCMR. According to a April 19, 1976, letter from the Inspector General's Office, plaintiff's March 18, 1976, Inspector General Action Request was forwarded to the ABCMR for consideration . . . The Court must assume. . .that the Request was sent to and received by the ABCMR". (Pet., App. E, p. 22a). In *Skinner v. U.S.*, 594 F.2d 824,1979, at 830 it has been held "Defendants errors were compounded when the Correction Board did absolutely nothing . . . when it could have." In *Marcotte v. Secretary of Defense*, 618 F.Supp. 756, 763, D.C. Kan. 1985): "The conduct of the Corrections Board in filing *Marcotte's* second application without action is arbitrary and capricious and shall be overturned. . .The Corrections Board, by failing to consider or address the merits of *Marcotte's* application, failed to exercise its discretion."

[5] A conspiracy exists when two or more persons reach an understanding to accomplish some unlawful purpose, or to accomplish some lawful purpose by unlawful means. The understanding between the members need not be an express or formal agreement. Thus, the existence of a conspiracy may be inferred from a series of events and may be proved by circumstantial evidence (see *Ruthledge v. Electric Hose and Rubber*, 327 F. Supp. 1267 (C.D. Calif. 1971); *Adickes v. S. H. Kress Co.*, 398 U.S. 144 (1970); *Hoffman-LaRoche, Inc. v. Greenberg*, 447 F. 2d 872, 875 (7th Cir. 1971); *El Ranco, Inc. v. First National Bank of Nevada*, 406 F. 2d 1205 (9th Cir. 1968).

APPENDIX 1–EXAMPLE OF THIS COURT'S *HAINS* AND ITS PROGENIES, THAT ARE DISRESPECTED IN THE 11TH CIRCUIT.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROIAND A. JONES,
Plaintiff,

vs.

CIVIL ACTION
FILE NO:
1:95-CV-1320-MHS

Ford Motor Company,
Ford Motor Comijany's Lincoln-Mercury
Division, Ford Motor Credit Company,
Don Jackson's Spartan Lincoln-Mercury,
and individually and in their
capacities, Alex J. Trotman, CEO
of Ford Motor Company, Mr. Edsel Ford,
Tom Wier, Robin Canady, Michael Nader,
Donna M. Duncan, Regina Wilson,
Stephen H. Block, and Ellen J. Zunich
of Ford Motor Credit Company,
Keith C. Magee and Kelly Huffman
of Ford Motor Company's
Lincoln-Mercury Division, Don Jackson,
Joe Reid, Casey Jackson, Michelle
Nestlehuft, Curtis Dyer, Don Jackson's
Spartan Lincoln-Mercury
Defendants.

MEMORANDUM IN SUPPORT OF
PLAINTIFF'S RESPONSE TO MOTION TO DISMISS

The Ford and Ford Credit defendants' motion to dismiss deserves no commentary because it is removed as follows:

"A District Court is in error in dismissing a pro se complaint without allowing him to present evidence on his claims." (Ha-ins-v. – Kemer, per curiam, 404 U. S. 19,520-21,92S.Ct.594,595-96,30L.ed.2d652,1972.

"Allegations of a pro se complaint, however inartfully pleaded, should be held to less stringent standards than formal pleadings drafted by lawyers." (Hains, supra. See also Franklin v. Murphy, 745 F.2d 1221 (9th Cir. 1984); Huges v. Rowe, 449 U. S. 5, 9, 1 01 S.Ct. 173, 66 L.Ed2d 163 1980 (per curiam), quoting Hai-nes v-. Kemer, 404 U. S. 519,520,92 S.Ct. 594 595,30 L.Ed.2d 652 (I 972); Hohman v. Hogan, 597 F.2d 490 (2d Ci r 1979).

"[w]e cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief ... The judgment is reversed and the case is remanded for further proceedings consistent herewith" Hains, supra, quoting Coneiy_v. Gibson, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-102, 2L.Ed.2d. 80, 1957, reaff in Estelle, 429 U.S .at 99, 106, 97 S.Ct. at 292. See also Huges v. Rowe, 449 U.S. 1980; Watson v. Ault, 525 F.2d 886, 892,11th Cir, formaly 5th Cir. 1976.

"The reasons for the Hains test are manifest. A pro se complaint provides an unsatisfactory foundation for deciding the merits of important questions because typically it is inartfully drawn, unclear, and equivocal, because thorough pleadings, affidavits, and possibly an evidentiary hearing will bring out facts ... Hains teaches that the decision on the merits ... should normally be postponed until

the facts have been ascertained ... Even when constitutional principles are not involved, it is important that 'the conceptual legal theories be explored and assayed in the light of actual facts... so that courts may avoid Ielucidating legal responsibilities as to facts which may never be' Shull v. Pilot Life Ins. Co., 313 F. 2d 445, 447 (CA5 1963). Stevens, dissenting, Estelle v. Gamble, 429 U. S. 1976.

A pro se is "entitled to an opportunity to offer proof " of allegations. (Hains v. Kerner, per curiam, 404 United States Supreme Court, 519,1971.

"arguable legal substance ... provide sufficient factual substance to survive dismissal...the district court should not have dismissed". (Franklin v. Mur hy, 745 F.2d 1221,1984).

"An action should not be dismissed ... without giving the [pro se] plaintiff an opportunity to be heard" (See Jones v. Commty. RedevelopmentAgency of L. A., 733 F.2d 646, 9th Cir. 1984, quoting M@oepartment Store v. Graphic Process Co., 637 F.2d 1211,1216,9th Cir. 1980).

"Dismissal is a harsh penalty and should be imposed only in extreme circumstances. Franklin v. Murphy, 745 F.2d 1221,1984.

"An unrepresented litigant should not be punished for his fai I ure to recognize subtle factual of legal deficiencies in his claims" (Hughes v. Rowe, U. S. 449, per curiam, at 9,1980).

Respectfully submitted,

s/Roland A. Jones
Roland A. Jones
Pro se

APPENDIX 2–EXAMPLE OF ALL THAT HAS TO BE DONE IN THE 11TH CIRCUIT TO OVERCOME THIS COURT'S HAINS V. KENER.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ROIAND A. JONES,
Plaintiff,

V. **CIVIL ACTION**
FILE NO:
1:95-CV-1320-MHS

FORD MOTOR COMPANY, et al.,
Defendants.

REPLY IN SUPPORT OF
FORD AND FORD CREDIT DEFENDANTS'
MOTION TO DISMISS

Plaintiff has responded to the motion of the Ford and Ford Credit Defendants to dismiss the complaint as to these Defendants simply by citing the familiar notion from *Haines v. Kerner*, 404 U.S. 519 (1972) that pro se complaints should be read liberally. Plaintiff offers no reason, either from the initial complaint or the proposed amendment, however, for the proposition that this set of pleadings, even construed most liberally in Plaintiff's favor, states a claim, either as to liability or damages, against these Defendants.

The *Haines v. Kerner* rule certainly does not mean that a pro se plaintiff's complaint can never be dismissed. To the contrary, this Court and courts in this circuit, affirmed by the Court of Appeals, have routinely dismissed pro se complaints where, liberally read in favor of the pro se plaintiff, they still fail to state any claim. See, e.g.. *Harris v.*

Evans, 20 F.3d 1118 (11th Cir.) (en banc) (noting the *Haines* rule, but reversing a denial of a motion to dismiss where plaintiff plainly lacked standing to sue), cert. denied, 115 S.Ct. 641 (1994); *Woods v. IRS*, 3 F.3d 403 (11th Cir. 1993) (affirming dismissal of Pro se complaint from tax protestors); *Bryant v. United States Dep't of Agric.*, 967 F.2d 501 (11th Cir. 1992); *Dorman v. Simpson*, 893 F. Supp. 1073 (N.D. Ga. 1995) (Hull, J.); *Black v. Atlantic Southeast Airlines, Inc.*, 851 F. Supp. 465 (N.D. Ga.) (Carnes, J.) affld without opinion, 37 F.3d 638 (11th Cir. 1994); *U-John v. Composite Bible-Based Religious Body*, 839 F. Supp. 861 (N.D. Ga. 1993) (Freeman, J.); *Cohran v. State Bar*, 790 F. Supp. 1568 (N.D. Ga. 1992) (Forrester, J.); *Page v. Grady*, 788 F. Supp. 1207 (N.D. Ga. 1992) (Evans, J.). Two cases which may have particular application here are Martin-*Trigona v. Shaw*, 986 F.2d 1384 (11th Cir. 1993) and *Cofield v. Alabama Public Service Commission*, 936 F.2d 512 (11th Cir. 1991). Both of these cases affirm the dismissal of pro se petitions brought by or for individuals who had brought many similar claims previously. Although Mr. Jones has not yet matched the records set by plaintiff Martin-Trigona and plaintiff Cofield he appears to be on his way. See, e.g., *Jones v. Secretary of Army*, 63 F.3d 1112 (11th Cir. 1995) (affirming per curium this Court's decision adverse to Mr. Jones); *Jones v. Fulton County*, 62 F.3d 402 (11th Cir. 1995) (same); *Jones v. Secretary of Armv*, 978 F.2d 721 (11th Cir. 1992) (same); *Jones v. Georgia*, 725 F.2d 622 (11th Cir. 1984) (affirming ruling by the Northern District of Georgia dismissing complaint by Jones).

In short, Mr. Jones has offered no factual or legal reason for putting these Defendants, and this Court, to the expense and hassle of this litigation, and the motion of the Ford and Ford Credit Defendants to dismiss the complaint as against them should be granted.

Respectfully submitted, this 30th day of October,

1995.

s/ John H. fleming
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Robin Canady, Michael Nader, Donna M. Duncan, Regina Wilson, Stephen H. Block, Ellen J. Zunich, Keith C. Magee and Kelly Huffman (Collectively the "Ford and Ford Credit Defendantsit)

APPENDIX 3--PETITIONER'S RESPONSE TO RESPONDENTS' MOTION FOR SUMMARY JUDGMENT, DATED JUNE 4, 1990, DISTRICT COURT DOCKET SHEET NO. IS #51

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

Roland A. Jones
Plaintiff,

vs.

CIVIL ACTION FILE NO. 1:88-cv-727-MHS

Secretary of the Army, et al.
Defendants.

AMENDMENT TO PLAINTIFF'S RESPONSE TO MOTION FOR SUMMARY JUDGMENT

This Court directed that defendants respond to my discovery requests by April 25, 1990, and after discovery I amend my response to defendants' Motion for Summary Judgment. Defendants' response to my second discovery request in not responsive (See Exhibits "A" and "A1"). Defendants have refused to obey this Court's Order by not providing documents requested in my first discovery request (See Exhibits "A2" and "A3").

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b. The ABCMR was capricious in not providing me Notice that both *Dilley* and *Sanders* had mandated that passover letters in my file were illegal.

> **Since *Dilley* was not concluded until 1980, the passover letters were in my record at the time 1974, 1975, 1979, and 1980 promotion boards met, and it was capricious of the ABCMR not to remove Passover Letters retroactive to 1974, as was done for the *Dilley* plaintiffs.**

During the ABCMR process in the 1980s, the ABCMR knew that both *Sanders* and *Dilley* had mandated that Passover letters be removed from the records.[8ABC]

The ABCMR should have acted and removed the passover letters without further appeal from me. All during the 1980 process the ABCMR concealed the above fact from me.

8/ A. "...passovers should have been removed...so that he could have a clean slate for selection board consideration on a `fair and equitable basis. Not to do this was both legal error and an injustice to plaintiff because it was arbitrary, capricious decision, and an abuse of discretion which aborted the selection process..." (See *Sanders v. U. S.*, 594 F.2d 804 at 819, 1979.

B. "...all records, including those reflecting nonselection by the promotion selection boards, be corrected to put appellants in the position they would have occupied had the Army not engaged in its unlawful selection procedure...The corrected records should reflect that appellants constructively served during the period of their illegal discharge, but they should not contain any adverse reference to the passing over of appellants for promotion by the selection boards of 1975 and 1976...The 1976 Boards, which did not select appellants for promotion, had before them records that reflected appellants' nonselection in 1975 even though appellants had never been lawfully passed over. Thus establishment of the Relook Boards had no effect on appellants' status before the 1976 Boards, though it should have if appellants were to be placed in

the same position they were in before 1975...This error was not insignificant, for the promotion prospects of an officer already once `passed over' by a selection board are narrow" (*Dilley v. Alexander*, 627 F.2d 407 at 409, 413, 924, 1980).

C. "We hasten to point out, however, that the promotion selection boards were void ab intio insofar as they considered the promotions of appellants...Appellants have never been lawfully discharged, so in the eyes of the law, they remain in service." (*Dilley*, 627 F.2d 407 at 411 and 413 (1980), Ex."C").

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Footnotes:

9/ A. We hold that a substantially complete and fair record is a necessary requirement of proper consideration by selection board...The documents which are sent to a Selection Board for its consideration therefore must be substantially complete, and must fairly portray the officer's record. If a Service Secretary places[s] before the Board an alleged officer's record filled with prejudicial information and omits documents equally pertinent which might have mitigated the adverse impact of the prejudicial information, then the record is not complete, and it is before the Selection Board in a way other than as statute prescribes...the Correction Board has committed legal error in applying the wrong standard of review and in failing to recognize plaintiff's legal rights were violated when the selection boards considered his record which was substantially incomplete and inaccurate..." (See *Sanders* at 814 and 818, 1979).

B. "The record before the selection board was fatally defective because it was prepared in violation of published mandatory procedures authorized by statute and regulations with the force of law. (See *Skinner*, at 830.)

10/ A. "...the Correction Board recommended that the 1975 Boards be `reconstituted' with the proper membership and that these so-called `Relook Boards' reconsider all primary zone officers who had been considered by the defective 1975 Boards...by operating under criteria employed by the 1975 Boards...The Corrections Board's decision to recommend the Relook Boards similarly amplifies the Army's attitude...This ends-justifying-the-means procedure is inconsistent...for it would permit the Army to violate its governing statutes at will and then determine for itself whether the violation made any difference". *Dilley v. Alexander*, 603 F.2d 919, 924 (1979).

B. "The invalid Boards convened by the Army were only, however, the beginning of appellants' problems...We must remember that appellants are career officers; deprivation of their livelihood was not a momentary insult that ended the instant they were thrown out on the streets. Rather, appellants faced the loss of their careers" (*Dilley*, 627 F.2d 407 at 411).

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(8). Ms. Stout, on behalf of defendants, has removed any dispute on the issue of whether or not defendants promoted me to nontenured Lt. Col. (AUS) by means of an illegal 1975 "Relook" promotion board[10A/], with a date of rank retroactive to 1974:

> "...the plaintiff's record was part of a `Relook' Lieutenant Colonel Promotion Section Board in 1974. The plaintiff was promoted as a consequence of the relook board." (See defendants' #1, Exhibit "A3")

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k. I would have been promoted to tenured Lt. Col. (RA) and not retired "but for" the illegally constituted promotion boards, and according to *Dilley*, I remain in service to this date.

Every promotion board that considered my record was illegally constituted. All my boards were defective, in one way or another. This portion of my case is similar, if not identical, to the circumstances and holdings discussed in *Dilley*, supra. In *Dilley*, they were defective. I was thrown out on the streets and suffered a deprivation of my livelihood because of a loss of my career. In *Dilley*, the appellants were also thrown out on the streets and suffered the same loss. The Army illegally convened my "Relook" board in 1975 and again in 1983 under 1979 and 1980 criteria for my tenure promotion. In *Dilley*, the court held that the Army illegally convened my 1975 "Relook" promotion board. My record, including not removing Passover letters for 1974 and 1975, was not reconstituted to put me in a position that I would have occupied before the convening of promotion boards for 1974, 1975, 1975 Relook, 1979, 1980, and the 1979/1980 Relook board. And, as was done for the *Dilley* plaintiffs, a record reconstruction of my file was not done. Every board, including my very first June 29, 1983, ABCMR panel, that has considered my record over the years was illegal in one way or another:

1. My original 1974 nontenured Lt. Col. (AUS) promotion board was illegal because the record before it contained defective OERs of the Army "Butler Study" era and a lack of assignments since 1962.

2. My 1975 nontenured Lt. Col. (AUS) promotion board

was illegal. Additionally, my record still contained the original defects (1., above), and evidence of my 1974 passover had not been removed.

3. My 1975 Relook promotion was illegal.[10AB] Additionally, my record still contained the original defects (1., above), and evidence of my 1974 and 1975 passover had not been removed.[9AB]

4. My 1979 Lt. Col. (RA) tenure promotion board was illegal because my record still contained the original defects (1., above), and evidence of my 1974 and 1975 Passover had not been removed.[9AB]

5. My 1980 Lt. Col. (RA) tenure promotion board was illegal. Additionally, my record still contained the original defects (1., above), and evidence of my 1974, 1975, and 1979 Passover had not been removed.[9AB]

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b. When he was the Executive Secretary to the ABCMR, he illegally organized my first ABCMR panel and other panels and boards as a ruse to facilitate a cover-up of his discriminatory intent and purpose.

I would have been reinstated early-on "but for" the illegally constituted 1980 ABCMR panel.

(1). Mr. Matthews illegally organized the first ABCMR panel of June 29, 1983, as a ruse to perpetuate the cover- up that the ABCMR had not acted during the 1970s.

(2). Section II, 3b, AR 15-185 requires there be three.

(3) members present to constitute a panel quorum (See Government Exhibit "B", Motion for Summary Judgment).

(3). The Memorandum of Consideration for the June 29, 1983, panel list the quorum as: Mr. Robert E. Carlson, Mr. Samuel A. Crumpler, and Mr. John Lee. This panel consisted of a quorum of only two (2) (Mr. Samuel A. Crumpler and Mr. John Lee).

(4). Mr. Robert E. Carlson is not on the ABCMR list of members provided to me by the ABCMR on October 11, 1984, under the FOIA. (Re: Exhibit "I", my Complaint, for letter and list of members. See page 213, ABCMR Administrative Record for the June 29th panel).

(5). Therefore, all subsequent ABCMR decisions on my subsequent appeals which stemmed from the illegal June 29, 1983 panel (MOCs April 25, 1984, and March 27, 1985), are questionable.

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f. Mr. Matthews and Mr. Bielenberg engaged in a deliberate effort to avoid the truth that the ABCMR did not act in 1974, 1975, or 1976.

They engaged in a deliberate effort to hide the fact that *Dilley* had mandated that retroactive corrections be made to the record.

(1). A series of class action law suits were filed against the Army by a group of officers known as the Promotion Research Committee (PRC), about the same time I was filing my applications. These suits *(Dilley* and *Fontain*) also claimed promotion violations for the 1974 and 1975

promotion boards.

(2). Although I was not a plaintiff in any of the suits, the Army used me as a pawn (See Barratt, Richard H. et. al. Exhibit "U") in an effort to overcome these suits by promoting me, and a few others, to Lt. Col. (AUS). The Army convened a "Relook" board due to the pressure of the *Dilley* case.[10] I was promoted by the Relook board on September 8, 1976, retroactive to 1974. Also, as the result of my default promotion, the MILPERCEN, not the ABCMR, reinstated me to attend a school.

(3). Though promoted, by default, and reinstated to school, my record remained uncorrected based on my applications.

(4). Because of the *Dilley* holdings against it in 1979 and 1980, the ABCMR knew that it was illegal to maintain the Passover letters in my record for 1974, 1975, 1979, and 1980.

(5). While the plaintiffs in *Dilley v. Alexander*, 603 F.2d 914, at 919-920 (1979), and *Dilley v. Alexander*, 627 F.2d 407 (1980) had had their records corrected by removing the passovers from their files,[9] the ABCMR did not remove from my record evidence of Passovers, as was done for the *Dilley* plaintiffs. The impact of the 1974 and 1975 Passover letters continued their impact through the 1980 tenured Lt. Col. board, causing passover letters for 1979 and 1980 to be added.

(6). A cover-up was designed to shut me up and to protect the Army from any additional liability that may be due me because I did not receive full benefit of the *Dilley* decisions.

(7). Both Mr. Matthews and Mr. Bielenberg knew, or should have known, about the *Dilley* holdings against the ABCMR in 1979 and 1980.

(8). In view of *Dilley*, *Sanders*, and *Skinner*, Mr. Matthews knew, or should have known, that my 1975 Relook board was held as illegal. However, he capriciously allowed a convening of another illegal Relook board under 1979 and 1980 criteria.

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WHEREFORE, defendant ABCMR's motion for entry of summary judgment should be DENIED.

Respectfully submitted,

s/ Roland A. Jones
Roland A. Jones